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John H. Crozier
1934 Huntington Turnpike
Trumbull, CT 06611-5116

In re Application of
MARGOLIN, Solomon B.
Application No.: 09/646,493
PCT No.: PCT/US99/04412
Int. Filing Date: 01 March 1999
Priority Date: 17 March 1998
Attorney Docket No.: 183-109(US)
For: TOPICAL ANTISEPTIC COMPOSITIONS
AND METHODS

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to "Petition to Revive Unavoidably Abandoned Application," which has been treated as a petition under 37 CFR 1.181 for the reasons set forth below. No petition fee is due.

BACKGROUND

On 01 March 1999, applicant filed international application PCT/US99/04412.

On 18 October 1999, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 18 September 2000 (17 September 2000 was a Sunday).

On 18 September 2000, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 19 October 2000, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 11 September 2001, the USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the above-identified application was abandoned for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 19 October 2000.

On 01 October 2001, applicant filed the instant "Petition to Revive Unavoidably Abandoned Application," which was accompanied by, *inter alia*, a copy of the Notification of Abandonment (Form PCT/DO/EO/909) and a correspondence log.

DISCUSSION

If applicant can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I. Accordingly, the instant petition has been treated as a petition under 37 CFR 1.181 rather than under 37 CFR 1.137(a).

A review of the file indicates that the Notification of Missing Requirements (Form PCT/DO/EO/905) was returned to the USPTO by the USPS. As such, nonreceipt of the Notification of Missing Requirements has been established.

As the instant petition has been treated as a petition under 37 CFR 1.181, rather than a petition under 37 CFR 1.137(a), no petition fee is due and the fee paid will be credited to attorney's deposit account no. 03-3838, as authorized by the transmittal letter of 18 September 2000.

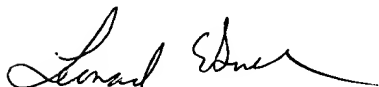
CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

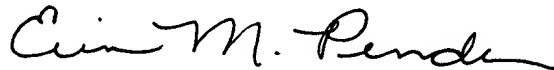
The Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 19 October 2000 is VACATED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 11 September 2001 is VACATED.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, including mailing of a new Notification of Missing Requirements (Form PCT/DO/EO/905).



Leonard Smith
PCT Legal Examiner
PCT Legal Administration



Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459